

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SOUTH TAHOE PUBLIC UTILITY  
DISTRICT, a public utility  
entity,

NO. 2:02-cv-0238-MCE-JFM

Plaintiff,

v.

ORDER

1442.92 ACRES OR LAND IN  
ALPINE COUNTY, CALIFORNIA;  
F. HEISE LAND & LIVESTOCK  
COMPANY, INC., a Nevada  
corporation, WILLIAM WEAVER;  
EDDIE R. SNYDER; CROCKETT  
ENTERPRISES, INC., a Nevada  
corporation,

Defendants.

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Following entry of judgment in this matter on April 28, 2006  
in accordance with the jury's verdict of April 27, 2006,  
Plaintiff South Tahoe Public Utility District ("the District")  
has timely moved for judgment as a matter of law pursuant to

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1 Federal Rule of Civil Procedure<sup>1</sup> 50(b). Alternatively, the  
2 District has requested either that the judgment rendered against  
3 it be reduced pursuant to Rule 59(e), or that a new trial be  
4 granted in accordance with Rule 59(a). The District's motion is  
5 denied.<sup>2</sup>

6 The District's motion is premised on two grounds. First, it  
7 argues that the jury separately valued the water rights  
8 associated with the property at issue in this litigation, in  
9 violation of both the so-called "unit rule" and Jury Instruction  
10 No. 22. Secondly, the District claims that the verdict was based  
11 on false or perjured testimony provided by George Thiel and Ross  
12 de Lipkau, experts who testified for Defendant Integrated Farms.  
13 Neither contention has any merit.

14 The "unit rule" embodies the notion that just compensation  
15 for condemned property cannot be determined by separately  
16 valuing, then adding, the separate components of land value. See  
17 *United States v. 6.45 Acres of Land*, 409 F.3d 139, 146 (3<sup>rd</sup> Cir.  
18 2005; *City of Stockton v. Albert Brocchini Farms, Inc.*, 92 Cal.  
19 App. 4<sup>th</sup> 193, 200 (2001). Application of the "unit rule",  
20 however, is subject to an exception in this case if the property  
21 at issue possessed excess water rights (beyond those necessary to  
22 sustain its alleged highest and best use), and if an active  
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26 <sup>1</sup>All further references to "Rule" or "Rules" are to the  
Federal Rules of Civil Procedure unless otherwise noted.

27 <sup>2</sup>Because oral argument would not be of material assistance,  
28 this matter was deemed suitable for decision without oral  
argument. E.D. Local Rule 78-230(h)

1 market exists for such excess water rights.<sup>3</sup> An enhancement to  
2 value premised on those rights does not run afoul of the "unit  
3 rule", as the Court made clear in Jury Instruction No. 22, which  
4 provided as follows:

6 INSTRUCTION NO. 22

7 The defendant is not entitled to have all factors  
8 affecting the value of its property added together and to  
9 have the total of the additions taken as the reasonable  
10 market value of its land. There can be no separate  
11 valuation of natural attributes of the land whenever the  
12 separate valuation of natural attributes of the land  
13 whenever the comparable sales method of valuation is used.  
14 One of the purposes of this rule is to avoid the duplication  
15 of compensation.

12 The water rights associated with the Heise Ranch are  
13 one element among many in determining the market value of  
14 the Heise Ranch. Such rights as an enhancement to the land  
15 value are admissible when there is a market for such rights.  
16 However, the water rights cannot be considered as an  
17 independent factor whose value is to be added to the value  
18 of the land.

17 The District's argument that Instruction No. 22 required the  
18 jury to adhere to the "unit rule" is disingenuous given the  
19 language of the instruction providing for an "enhancement" in  
20 value provided that a market has been established for water  
21 rights. Moreover, in accordance with the instruction, the jury  
22 assigned a lump sum value to the property in question  
23 (\$12,659,429.00), then added by way of explanation that water  
24 rights associated with the property constituted \$3,174,600.00 of

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26 <sup>3</sup>According to Integrated Farms' expert, Arthur Gimmy,  
27 treating such excess rights as an enhancement factor is in  
28 accordance with the procedures set forth by the Appraisal  
Institute, Uniform Appraisal Standards for Federal Land  
Acquisitions, 5<sup>th</sup> Ed. 2000 (published in cooperation with the  
United States Department of Justice).

1 that total value. The jury's verdict is not inconsistent with  
2 the instruction.

3 In addition, with respect to application of the "unit rule"  
4 itself, the District persists in asserting that the rule  
5 precludes any separate assessment of water rights in this case,  
6 despite the fact that the Court has rejected that very argument  
7 on two previous occasions. On March 20, 2006, prior to  
8 commencement of trial, the Court rejected the District's Motion  
9 in Limine No. 13, which sought to preclude Arthur Gimmy's  
10 enhancement value adjustment of the Heise Ranch's excess water  
11 rights as a component of the property's fair market value. The  
12 Court specifically found that Gimmy's methodology in that regard  
13 was appropriate while, at the same time, recognizing that it  
14 could be subject to rigorous cross-examination. Then, on April  
15 10, 2006, during trial, the District renewed its motion to  
16 exclude Mr. Gimmy's testimony on grounds that an active market  
17 for excess water had not been established. The Court denied that  
18 renewed motion as well.

19 In attempting to once again assert that the "unit rule"  
20 precludes any assessment of excess water rights, the District in  
21 effect seeks to revisit the same arguments already rejected twice  
22 by this Court. The District's inappropriate attempt to take "a  
23 third bite at the apple" is summarily rejected. A motion for  
24 judgment is a matter of law is appropriate "only if the verdict  
25 is against the great weight of the evidence, or it is quite clear  
26 that the jury has reached a seriously erroneous result." McEuin  
27 v. Crown Equipment Corp., 328 F.3d 1028, 1036 (9<sup>th</sup> Cir. 2003),  
28 citing E.E.O.C. v. Pape Lift, Inc., 115 F.3d 676, 680 (9<sup>th</sup> Cir.

1 1997). Here no such result has occurred with respect to  
2 application of the unit rule.<sup>4</sup> The District has similarly not  
3 demonstrated its entitlement to a new trial. The jury's verdict  
4 was not contrary to the clear weight of the evidence,<sup>5</sup> and it is  
5 not necessary to vacate (or reduce) the verdict in order to  
6 prevent a miscarriage of justice. Passantino v. Johnson &  
7 Johnson Consumer Products, Inc., 212 F.3d 493, 510 (9<sup>th</sup> Cir.  
8 2000).

9 The second argument advanced by the District in support of  
10 its motion goes to another recognized ground for granting a new  
11 trial; namely, the propriety of affording such relief when a jury  
12 verdict is based on false or perjurious evidence. Id. In order  
13 to justify a new trial, however, the purportedly defective  
14 testimony must have materially affected the jury's verdict in the  
15 sense that a different result would likely have been reached in  
16 the absence of such testimony. See Coastal Transfer Co. v.

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18 <sup>4</sup>Preliminarily, in opposing the District's motion for  
19 judgment as a matter of law under Rule 50(b), Integrated Farms  
20 argues that the District has not established the predicate for  
21 such a motion by showing that a Rule 50(a) motion was brought  
22 prior to the close of evidence. To the extent that the  
23 District's motion amounts to a challenge to the consistency of  
24 the jury's verdict, however, the Court may consider a Rule 50(b)  
25 motion even in the absence of a prior motion. Pierce v. Southern  
26 Pacific Transp. Co., 823 F.2d 1366, 1369 (9<sup>th</sup> Cir. 1987). Here,  
27 because one of the District's arguments is that the verdict was  
28 inconsistent with the instructions provided to the jury, the  
Court will proceed to dispose of the District's motion on its  
merits.

25 <sup>5</sup>The Court rejects the District's argument that the  
26 \$3,174,600.00 enhancement component of property value constitutes  
27 duplicative compensation, since Integrated Farms' expert  
28 testimony showed that the enhancement related to excess water  
rights above and beyond that necessary to sustain the highest and  
best use of the property. Arthur Gimmy took those excess water  
rights into account, for example, when considering comparable  
property values.

1 Toyota Motor Sales, USA, 833 F.2d 208, 211-12 (9<sup>th</sup> Cir. 1987).

2       Here, the District has identified two alleged falsities in  
3 testimony offered on behalf of Integrated Farms. First, the  
4 District claims that both George Thiel and Ross de Lipkau  
5 indicated that Lyon County itself had bought water rights  
6 belonging to a comparable property, the O'Callaghan Ranch,  
7 whereas in actuality those rights had been acquired by a  
8 developer for dedication to (and joint ownership with) the County  
9 in connection with the developer's building project.

10 Significantly, in Integrated Farms' rebuttal case, the above-  
11 described factual discrepancy was recognized and disclosed to the  
12 jury. Any associated inconsistency was minor, and under no  
13 stretch of the imagination could such inconsistency have risen to  
14 the level of affecting the jury's verdict and justifying a new  
15 trial.

16       The District fares no better with respect to the second area  
17 of allegedly false testimony it identifies. That testimony  
18 relates to Mr. Thiel's claim that he offered \$3.9 million to  
19 purchase the O'Callaghan property, whereas in actuality only \$3.0  
20 million was offered in writing through a lease/purchase  
21 agreement. The declaration of Jeff Kirby, a managing member of  
22 Thiel Engineering Consultants, however, explains both that  
23 lease/purchase agreements were commonly used in the sale of  
24 undeveloped property like the Heise Ranch, and that Kirby, on  
25 Thiel's behalf, ultimately did offer \$3.9 million orally for the  
26 property. (See Kirby Decl. in Opp. to Pl.'s Mot., ¶ 5, 9). Any  
27 factual discrepancy in this regard hardly goes to the crux of the  
28 case and not even the District can adequately explain, as it

1 must, how the testimony would have affected the case's outcome in  
2 order to justify a new trial.

3 For all the foregoing reasons, the District's Motion for  
4 Judgment as a Matter of Law, or Alternatively for New Trial  
5 and/or remittitur, is DENIED.

6 IT IS SO ORDERED.

7 DATED: August 8, 2006

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11 MORRISON C. ENGLAND, JR.  
12 UNITED STATES DISTRICT JUDGE  
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